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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/749,364 | 12/31/2003 | Michael Landwehr | 5760-14400 | 1164 |

35690 7590 07/14/2006

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
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AUSTIN, TX 78701

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| EXAMINER |
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IQBAL, NADEEM

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| ART UNIT | PAPER NUMBER |
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2114

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,364

Applicant(s)

LANDWEHR ET AL.

Examiner

Nadeem Iqbal

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-29 is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>Aug 22, 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraenkel et al., (U.S. Patent number 6738933).
2. As per claims 1, 9, Fraenkel teaches (col. 3, lines 63-65) that the performance data is monitored in real time to check for any user defined alert conditions and when such an alert condition is detected, a notification message may be sent. He thus teaches limitations pertain to detecting a performance problem in a computer system. He also teaches (col. 4, lines 64-66) a root cause analysis (RCA) system that automatically analyzes performance data collected by agents to locate performance degradations. He thus teaches limitations pertain to identifying a root cause of the performance problems. As per improving the performance of the computer system by implementing a solution to the root cause of the performance problem and verifying that the solution to the root cause problem has improved. He teaches (col. 46, lines 9-12) that the RCA system analyses the collected performance data automatically and when certain types of server resources are determined by such analyses to be the source of a performance problem, a corrective action is automatically performed.
3. As per claims 2 & 10, With reference to collecting performance metrics for the one or more applications tiers. He teaches (col. 35, lines 61-63
4. As per claims 3 & 11, With reference to drilling down into performance metrics collected for the one or more application tiers. He teaches (col. 34, lines 39-42) that the RCA system

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allows users to quickly and efficiently drill down to determine the likely root cause or source of a performance problem.

5. As per claims 4 & 12, He also teaches as stated by claim 1 above detecting the performance problem (col. 3, lines 63-65), identifying the root cause problem (col. 4, lines 64-66) and improving the performance of the computer system (col. 46, lines 9-12).

6. As per claims 5 & 13, Fraenkel substantially teaches the claimed invention as disclosed related to claim 1 above. He also teaches (col. 2, lines 47-49) that his invention provides a software system and method for monitoring the post-deployment operation. He also teaches (col. 3, lines 63-65) that the performance data is monitored in real time to check for any user defined alert conditions and when such an alert condition is detected, a notification message may be sent. He thus teaches limitations pertain to detecting a performance problem in a computer system. He also teaches (col. 4, lines 64-66) a root cause analysis (RCA) system that automatically analyzes performance data collected by agents to locate performance degradations. He thus teaches limitations pertain to identifying a root cause of the performance problems. As per improving the performance of the computer system by implementing a solution to the root cause of the performance problem and verifying that the solution to the root cause problem has improved. He teaches (col. 46, lines 9-12) that the RCA system analyses the collected performance data automatically and when certain types of server resources are determined by such analyses to be the source of a performance problem, a corrective action is automatically performed.

Allowable Subject Matter

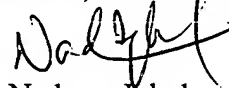
7. Claims 14-29 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nadeem Iqbal whose telephone number is (571)-272-3659. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571)-272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Nadeem Iqbal
Primary Examiner
Art Unit 2114

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